South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

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Legislative Update, March 31, 1992

House Week in Review

For the first time this session, a joint resolution to create an executive cabinet under the authority of the governor came before the full House of Representatives last week. H.4334 calls for the creation of an executive cabinet by January 15, 1995. The 15-member cabinet would be appointed by the governor with the advice and consent of the State Senate.

The joint resolution on the executive cabinet would go before the voters in a statewide referendum in November if approved by the General Assembly this session. However, H.4334 never got to a vote in the House last week after objections placed the joint resolution on the House second reading contested calendar.

While the executive cabinet resolution did not make much legislative headway, several bills were given third reading or enrolled for ratification. S.1311, legislation giving nurse practitioners the authority to write drug prescriptions, was given third reading in the House Wednesday and enrolled for ratification.

Ratified as an act was H.3774, legislation that would allow public comment before the state Department of Health and Environmental Control issues permits for waste discharge and air contaminants.

The House also gave third reading to a number of bills. These include H.4309, which would repeal the current requirement that Highway Patrol troopers retire at a certain age. H.4092, the Bone Marrow Donors Act was given third reading last week, as was H.4257, which would increase the penalties for cruelty to animals.

The House and Senate also took time out on Wednesday to meet in joint session to hear the annual address of the National Commander of the American Legion. This year's speech was delivered by National Commander Dominic D. DiFrancisco.

Bill Introduced

The following bills were introduced in the House of Representatives last week. Not all the bills introduced in the House are featured here. The bill summaries are arranged according to the House standing committee to which the legislation was referred.

Judiciary

False Statements to State or Local Governments (H.4592, Rep. Wilkins). This legislation would make it illegal to give a false statement to law enforcement or a state or local agency after receiving notice of a criminal investigation. The bill specifically would make it illegal to give false information to a state regulatory agency after notice of a regulatory investigation.

Stiff penalties accompany the provisions outlawing false statements, documents, claims or returns to state or local government. The violation would be a misdemeanor but would carry up to a $25,000 fine and/or up to one year in jail.

County-Appointed Law Enforcement (H.4604, Rep. Wilkins). This bill would allow county governing bodies to appoint enforcement officers; however, the duties assigned to the county officers could not conflict with the duties of the county's sheriff's department or result in its reorganization or restructuring.

Education Special Tax District (H.4608, Rep. Huff). This legislation would amend state statutes to allow a special tax district for education to be created within a county. All the usual procedures for the creation of such a tax district would remain as currently in the statutes.

Voluntary Voter Registration with Driver's License (S.32, Sen. Rose). Starting January, 1993, this legislation would direct the State Highway Department to provide a voter registration form to every person who applies for a driver's license, identification card or renews a license. The driver would be given the opportunity to fill out the registration form in the Highway Department office. The completed form would be forwarded to the county voter registration office on a weekly basis.

The Highway Department also would be responsible for informing the voter registration office of any change of address submitted by a driver to change the address on his license.

Abandoned or Recovered Stolen Property (S.1248, Sen. Hayes). This legislation would allow a sheriff or police chief to sell at public auction any recovered stolen or abandoned property after meeting certain directives. First, the sheriff or police chief must notify the owner of the stolen property within 10 days of the recovery. This notification must be made by certified mail and contain a list of the specific items. The owner then would have 60 calendar days to claim the property. If after 60 days, the items are not claimed, the property may be sold to the highest bidder at public auction. The police chief or sheriff would wait 180 days before recovered stolen or abandoned property may be sold at auction. During this time, the agency must make a diligent search to find the owners. After the 180 days, the property would be declared abandoned. Funds from the auction first must go to pay for the auction expenses, with the balance being placed in a special fund.

The sheriff or police chief may use in his own agency any item declared abandoned; however, the items must be placed on the agency's official inventory list. The bill stipulates what abandoned items not appropriate for public auction may be destroyed by the agencies. These include clothing, food, prescription drugs, weapons, household cleaning items, chemicals or other items that appear not useable.

Abandoned items also could be turn over to non-profit organizations for use if the agency receives the position of the city or county governing body. However, the accrued value of the property given to an individual non-profit organization cannot exceed $1,000 in value in one fiscal year.

Spousal Communication (S.1354, Sen. Rose). This legislation would require a husband or wife to disclose any communication, whether it was made in confidence or not, in connection with a criminal sexual conduct charge involving a minor, the commission or attempt to commit a lewd act upon a child, or in cases involving the death or physical abuse of a minor.

Labor, Commerce and Industry

Loan Brokers (H.4591, Rep. Wilkins). This legislation would regulate the actions of loan brokers, who are not otherwise regulated by federal or state law and licensed by a government agency. A loan broker would be anyone who arranges or attempts to arrange a loan of money, credit card or line of credit in expectation of consideration. This definition would extend to those who solicit on behalf of loan brokers and those who, in expectation of consideration, advise a borrower regarding the obtaining of a loan, credit card or line of credit. The bill would not apply to the traditional sources of credit or loans: banks, savings and loans, credit unions, trust companies, consumer finance companies, retail installment sales, FHA and VA approved lenders or mortgage brokers, among others.

The legislation prohibits a loan brokers from assessing or collecting an advance fee from a borrower to provide services as a loan broker. The provisions also prohibit any false or deceptive practices on the part of loan brokers. Any employee or agent of a loan broker could be sanctioned for violation of the provisions, not just the loan broker himself.

The Securities department of the State Secretary of State's Office could investigate anyone for non-compliance with these provisions. The department would have the authority to issue a cease and desist order against a loan broker if the department has determined these provisions have been violated. Administrative fines of up to $5,000 may be imposed for violations. The bill outlines the procedures the department would follow in investigating violations. The Securities department could bring action in court against the loan broker, leading to a temporary or permanent injunction. The court would have the power, upon the investigation of the department, to impound assets and property and appoint a receiver. The department could also apply to the court for restitution for victims.

Violations of the provisions would be a misdemeanor punishable by a fine of up to $5,000 and/or one year in prison.

Franchise Investment Act (H.4594, Rep. Wilkins). This legislation is aimed at protecting franchisees when buying a franchise. The bill states that the General Assembly finds that franchisees can suffer substantial losses when the franchisor does not provide complete information regarding the franchisor and the franchise relationship. Also many franchisees lack bargaining power and purchase a franchise when they are unfamiliar with operating a business, or with the franchised business or with industry practices in franchising. This chapter seeks to assure that each potential investor receives the information necessary to make an informed decision about the offered franchise, and to prohibit the sale of franchises when there is a likelihood that the franchisor's promises will not be fulfilled.

Under this legislation, it would be unlawful to offer or sell a franchise unless the offer is registered under these statutes or is exempt. Exempted transactions would include franchisors whose net worth is at least $10 million or a franchisor that is at least 80 percent owned by a person whose last financial audit shows a net worth of $10 million. Also exempted is a franchisor that has had at least 25 franchises for the last five years, or transactions in which the investor receives a disclosure document at least 10 business days before the sale. Also exempted would be a sale to a non-resident, a franchisee who sells his business to another franchisee, or the sale to a person who has been involved with the franchise for at least two years, among a number of other exempted transactions.

All franchise sales must have a disclosure document, which must be presented when the registration application is filed with the Secretary of State. The disclosure document is the Uniform Franchise Offering Circular as adopted and amended by the North American Securities Administrators Association. The Secretary of State also may require the filing of an audited financial statement by the franchisor, if there is question of whether he can fulfill his financial obligations to the person buying the franchise. The franchisor may have to set aside an escrow account if the Secretary of State's Office is not satisfied with his financial status.

Franchisors also would be required to keep books, records and disclosure statements on all its offers and sales franchises in the state for five years. The documents would be open for examination by the franchisees.

The legislation would prohibit fraud and prevent franchisors from restricting franchisees from associating with each other. The Secretary of State could deny a franchise registration for violations of any of these provisions. The office also could investigate a franchisor, impose an administrative assessment of $5,000, seek a restraining order or bring an action in court. Franchisors also would be liable to the franchisees for violations of this legislation.

Medical, Military, Public and Municipal Affairs

Registration of Family Day Care Homes (H.4605, Rep. Haskins) This legislation would make some changes to the requirements for registered family day care homes approved for federal program participation. The bill would exempt these approved, registered family day care homes from having a person on the premises at all time who has been trained in infant and chid CPR. The bill also would allow entrance to the home by other authorized entities, other than just the Department of Social Services, for consultations at the request of an approved, registered home.

The requirements for family day care homes wishing to be approved for federal program participation would include certain fire and safety precautions including a fire extinguisher, smoke detectors, screens on fireplaces, safety cap on electrical outlets, and a disaster plan for fire and tornado. The home also must be reasonably clean with no hazardous material accessible to children and no insects or rodents. All pets must have rabies shots, and all children must have individual hand towels and cups. The operator must have a criminal background check and three letters of reference. DSS or another authorized entity department would visit the home during the first six months of operation and once a year thereafter. The department would approve the home on a yearly basis.

Ways and Means

Sales Tax Exemption of Bibles (H.4600, Rep. Fair) This bill would make bibles exempt from sales tax.

Use of Credit Cards to Pay County Taxes (H.4601, Reps. Harvin and M. Martin). Under this legislation, a taxpayer could use a credit card or charge card to pay for county personal or property taxes. The county governing body would determine which credit cards or charge cards would be accepted.

Housing Trust Fund Act of 1992 (H.4606, Rep. Whipper). This legislation would establish the S.C. Housing Trust Fund, which would be used to increase the supply of safe, decent and affordable housing to members of the very low or lower income households. Funding would be used to make loans, grants or provide for matching funds to secure financial assistance for affordable housing. No project or development could receive money from the fund unless the housing units are reserved exclusively for the use of members of very low or low income households for at least 30 years.

The state treasurer would be the trustee of the fund, which must be maintained separately from the General Fund. The Housing Trust Fund would receive money from the sale of deed stamps -- 50 cents of the deed tax on those sales over $100 but not exceeding $500 and 50 cents of tax on each additional increment of $500 would go to the Housing Trust Fund.

The money would be dispersed only with the signature of the chairman of the S.C. State Housing Finance and Development Authority and the board's executive director. A nine-member advisory committee would be created to advise the board on particularly critical housing needs.

The board's executive director of would develop a comprehensive program for the use of the funds to ensure equitable distribution of the money between urban and rural areas, devise and implement an application system, provide technical assistance to applicants, and ensure all developments receiving assistance comply with the state's Fair Housing Act.

Report: Lessons in School Funding

The question of equitable school funding is a perennial issue before state legislatures. The following report explores the crisis the state of Texas found itself in as it struggled with the equity funding question. The report, published last month in the National Conference of State Legislature's publication *State Legislative Report*, also explores how Kentucky and New Jersey responded to this issue. Thanks is given to the NCSL for permission to reprint this report.

Introduction

In education financing, Texas has become a fine example of how not to do it. *Edgewood v. Kirby*, a derivative of *Rodriguez v. San Antonio Independent School District (ISD)*, which has lingered on for some two decades, has not been fully settled by either the Texas courts, lawmakers or former governors.

The Texas Crisis

The most recent act in the Texas education saga opened in 1987 when a Texas District Court ruled in favor of the plaintiffs, Edgewood Independent School District (ISD) and other property-poor school districts, declaring the state's financing system unconstitutional. Although, with an extension, the court gave legislators about one and a half years to act, the case went back to court where, in 1988, the Third Court of Appeals reversed and ruled in favor of the state. It stated that to judge the system on the Texas Constitution was a political decision which lawmakers must confront themselves. In essence, it gave the Legislature an open ticket to do nothing or everything. One year later, the original plaintiffs appealed the case to its inevitable climax, the Texas Supreme Court, which ruled unanimously that a part of the state's educational financing system was unconstitutional as based on the Texas Constitution. This court held the state responsible for ensuring that

revenues be only "substantially equal" at similar levels of district tax effort, differing from the District's Court ruling that the system be equal dollar for dollar. It said that "a band-aid [solution] will not suffice," meaning that a major overhaul was needed, rather than merely pumping more funds into an unconstitutional financing system.

But the story was far from over. The court gave legislators seven months (from October 1989 to May 1990) to devise a new system. However, Texas policymakers faced difficult budget times, a governor who refused to raise taxes as well as place education as major priority, upcoming local election with political pressures pushing for more results with less money, and a court system which has proven lax on injunction deadlines.

On May 1, 1990, the date of the original injunction, the Supreme Court again extended the deadline one month, understanding that the lawmakers were working toward a new plan. It also appointed a court marshall to draw up an optional system, with already existing revenues, to be invoked if lawmakers failed to meet the deadline. On June 6, during the fourth special session on the issue, the Legislature passed Senate Bill 1, which would increase a few taxes on various goods to raise some $3.5 billion in new financing over five years and to continue distribution of state funds under essentially the same system.

The bill went to the District Court for a ruling on its constitutionally. In what was now known as *Edgewood* Round II, the District Court struck down the bill on September 24, 1990 but allowed it to remain in force temporarily for the already-begun school year, and gave legislators 11 months to enact an efficient system. The decision was appealed directly to the Texas Supreme Court which, on January 22, 1991, affirmed the bill was unconstitutional, and lengthened the lower court's deadline for enactment of a constitutional system of school financing to April 1, 1991, or slightly over two months. The court stated, "To be efficient, a funding system that is so dependent on local ad valorem property taxes must draw revenue from all property at a substantially different rate." One month later, in a rehearing and first split decision in the *Edgewood* case, the court clarified its position by saying that the current heavy reliance on local property tax made the system unconstitutional, not the fact that any localized enrichments were used at all.

There was one month left before the new deadline. Texas lawmakers had been bounced from the District Court's stance that any local enrichment was illegal, to the Supreme Court's statement that some enrichment was permissible. The high court went so far as to state two possible options which policymakers might follow: "We do not prescribe the means which the Legislature must employ in fulfilling its duty, [but] consolidation of school district is one available avenue toward greater efficient in our school finance system, [and] another approach to efficiency is tax base consolidation."

Opting for a form of the latter, in the spring of 1991, the Legislature passed Senate Bill 351 to equalize taxation efforts within each county in Texas by creating "county education districts" (CEDs) to finance the state's basic foundation program. The bill became effective on September 1 and, like S.B.1, will hold for the school year regardless of its constitutionally. Many people involved with *Edgewood* believe the bill to be unconstitutional because they see the taxing districts serving as little more than glorified state income tax zones. Texas is one of only seven states that doesn't have a state income tax. Although the original plaintiffs in the case primarily support the bill except for the fact that it does nothing to ensure equal funds for facilities, they have asked the District Court to delay hearings until actual appropriations have been made. However, on June 17 over 50 property wealthy districts filed suit challenging the constitutionality of the new system. On August 7 District Court Judge F. Scott McCown declared that the CEDs created by S.B. 351, and the tax they will levy, are constitutional. In an order of severance issued concurrently with the opinion, McCown wrote, "The county education districts created by S.B. 351 are a valid exercise of the Legislature's power to provide for the formation of school districts by general law, and the direction contained within S.B. 351 to the trustees of those districts to levy taxes sufficient to raise their local school share for the public schools is a valid exercise of the Legislature's authority to pass laws for the assessment and collection of taxes within school districts, and these are not state ad valorem taxes." However, he also warned the Legislature that for the rest of S.B. 351 to be equitable, "it must be funded."

Fittingly, the melodrama that is Texas school finance does not end here. Judge McCown has ruled that additional claims raised by the plaintiffs and plaintiff-intervenors would be decided separately from the August 7 decision. "Chief among the issues yet to be decided, in additional to full funding and adequacy, are the implication of the absence of a facilities allotment in Tier 1 of the school finance system as well as the effects of imposing the program revenue cap ordered in S.B. 351.

On January 30, 1992, the state Supreme Court struck down as unconstitutional the state's county education district plan by a 7-2 vote, saying that it effectively created a statewide property tax. About 50 school districts had challenged the law, with numerous businesses also filing suit. In a somewhat surprising move, the court gave the state Legislature until June 1993 to come up with a better funding plan, allowing the unconstitutional tax to stay in place for the remainder of this school year as well as the next. This could open a Pandora's box of litigation by individual citizens and businesses who are being required to pay an unconstitutional tax this year and an escalating tax in 1993. According to the Legislature's plan, a minimum local property tax rate of 72 cents per $100 of assessed valuation will rise to 82 cents during the 1992-93 school year. By setting the range for property tax rates and

predetermining its uses, the tax effectively was a state property tax, forbidden by the state constitution. To adopt such a tax would require voters to amend the constitution, the court said in its opinion. The ruling marks the third time since 1989 that the state Supreme Court has rejected a school finance plan. Until the Legislature is able to draft a plan which can pass constitutional muster, only time will tell what's in store for Texas education.

Other Examples

Texas lawmakers are not alone in dealing with an unconstitutional school financing system. Since the 1973 U.S. Supreme Court ruling in *Rodriguez* that a state's education financing system must be judged on the individual state's constitution, not the U.S. Constitution, legal action on the issue has flourished. To date, 10 states have seen their education financing system declared unconstitutional in court, and lawsuits are currently pending in 19 states. An argument can be made that the strength of legislative response is often in correlation to the severity of the state court's demands. While Texas lawmakers still continue to correct their system to meet the minimal requirements of the court, legislators in several other states with funding systems struck down at about the same time have approached the situation less as a problem and more as an opportunity to enact innovative legislation. Two strong examples of how legislatures responded to court demands are New Jersey, which reacted quickly to judicial pressures yet, later, somewhat retracted proposed reforms, and Kentucky, which fully and efficiently met the stringent court mandates.

Kentucky

In *Rose v. The Council*, 1989, just months before the Texas decision, the Kentucky Supreme Court struck down the state's education financing system in its entirety. Taking the strictest stance to date, the court called the state's system inefficient, unequal, not uniform, inadequate and underfunded. The court said, "It is crystal clear that the General Assembly has fallen short of its duty to enacted legislation to provide for an efficient system, of common schools throughout the state... Kentucky's children, simply because of their place of residence, are offered a virtual hodgepodge of educational opportunities." Falling one step short of prescribing policy, Kentucky Supreme Court judges emphasized that "we simply take the plain directive of the Constitution, and armed with its purpose, we decide what our General Assembly must achieve in complying with its solemn constitutional duty." As for setting specific goals, the court told legislators that if ad valorem taxes are used, property must be taxed at 100 percent of fair market value, and that the tax rates from district to district must be uniform, although local taxes may be used as a supplement rather than, as before, as a base. "Lest there

be any doubt, the result of our decision is that Kentucky's entire system of common schools is unconstitutional."

In a sort of constitutional straitjacket, the Kentucky legislature nine months later responded positively with what experts have cited as one of the most comprehensive education reform bills ever. Lawmakers met with consultants from other states and produced the Kentucky Education Reform Act of 1990, a system that has been called everything from "required reading in education circles" and "a national model" to "fascinating," even "pioneering." The system includes more local control, anti-nepotism protection, and financial rewards or incentives based on accountability, as well as ungraded K-4th grade classes and community social service centers. In essence, it incorporates a plethora of school reform suggestions which have been on the workbench throughout the country for years. The Kentucky Supreme Court called for strict reforms and the legislature responded accordingly.

New Jersey

New Jersey's school finance time-line looks similar to that of Texas, but its most recent legislative response to court mandates falls closer to Kentucky's. The New Jersey Supreme Court in *Abbott v. Burkes*, 1990, struck down parts of the state school financing system one year after the Kentucky decision. Similar to Texas' on-going court battles, *Abbott* was a close cousin to a case in 1973, *Robinson v. Cahill*, in which the New Jersey Supreme Court declared the state responsible for establishing and maintaining a "thorough and efficient" system for funding education, as directed by the education article of the state constitution. Under the Public School Education Act of 1975, declared constitutional in 1976, the Legislature changed the system. However, in 1981, 28 districts on behalf of poor, urban school children in the *Abbott* case filed suit challenging the implementation of the system as it applied to their districts. Fifteen years after the system was enacted, nine years after the *Abbott* case was filed, and 17 years after the *Robinson* decision, the New Jersey Court ruled in favor of plaintiffs saying, "We hold the act unconstitutional as applied to poorer urban school districts. Education has failed there, for both the students and the state." The court ruled unanimously that "the [1975] act must be amended...so as to assure the poorer urban districts' educational funding must be certain, every year...[and] must be adequate." It also declared unconstitutional the state's minimal aid program, a flat amount which all districts receive with no consideration as to wealth. The court added that while rich districts may spend more for education, it is the state's duty, in turn, to increase funding to allow poorer ones to keep up.

Interestingly, one week prior to the final court decision, Governor James J. Florio introduced a comprehensive school finance reform package. Apparently, satisfied with the ruling and the timing of his proposal for reform, the governor remarked, "Overall, I think our proposal gets an A from the Supreme Court." However, the plan did not get an A from many educators. Under Florio's plan the new finance system called for increasing state aid to schools by $970 million and funnelling more money to poor urban districts. At the same time, the proposal would have cut state funding to more than 200 largely suburban districts that would see their main form of state aid eventually eliminated. There were other problems arising from the Florio proposal, the most notable being the shift of responsibility for teacher pensions from the state to local districts. Predictably, Betty Kraemer, president of the New Jersey Education Association, termed the plan "intolerable." The Legislature later increased the governor's bill to $1.3 billion and passed it in 1990. The resulting measure, called the Quality Education Act, sought to generate the $1.3 billion in new money by increasing the state sales and income taxes. However, in March 1991, bowing to public upheaval, Florio and the then-Democratic controlled Legislature agreed to shift $360 million of QEA money to property tax relief. The story doesn't end here. The plaintiffs' legal counsel, The Educational Law Center, filed a motion with the State Supreme Court in June urging the court to overturn the QEA law in light of the shift in property tax relief. Furthermore, the lawyers asked the court to order Governor Florio and the Legislature to come up with a new plan by December 31 to close what they described as the widening gap in spending between poorer urban school districts and affluent, suburban ones. If the deadline was not met, the lawsuit argued, the court should take direct action to equalize school funding.

The fallout from the QEA proposals was reflected in the November 1991 elections, in which all 120 seats in the General Assembly were up for grabs. The results was a public backlash at Florio and the Democrats. Going into the election, Democrats held a 23-17 advantage in the Senate and a 43-37 advantage in the Assembly. The election drastically changed the power base by electing Republicans in record numbers: 27-13 in the Senate and 58-22 in the Assembly, thus providing a "veto-proof" margin for the now Republican-controlled Legislature.

While the Kentucky reforms centered on curriculum and accountability, the New Jersey Legislature focused its energy on revamping the state equalization formula itself. Specifically, the new system eliminates the minimal aid program; excludes teachers' pensions funds from equalization; caps local enrichment efforts; revises the funding formula to, among other things, equalize state aid for schools needing to provide special services such as bilingual education; and incorporates personal income as well as property value in calculations of local ability to pay. Essentially, the school finance reform initiative concentrated on an extensive overhaul of the distribution of founds as well as substantive

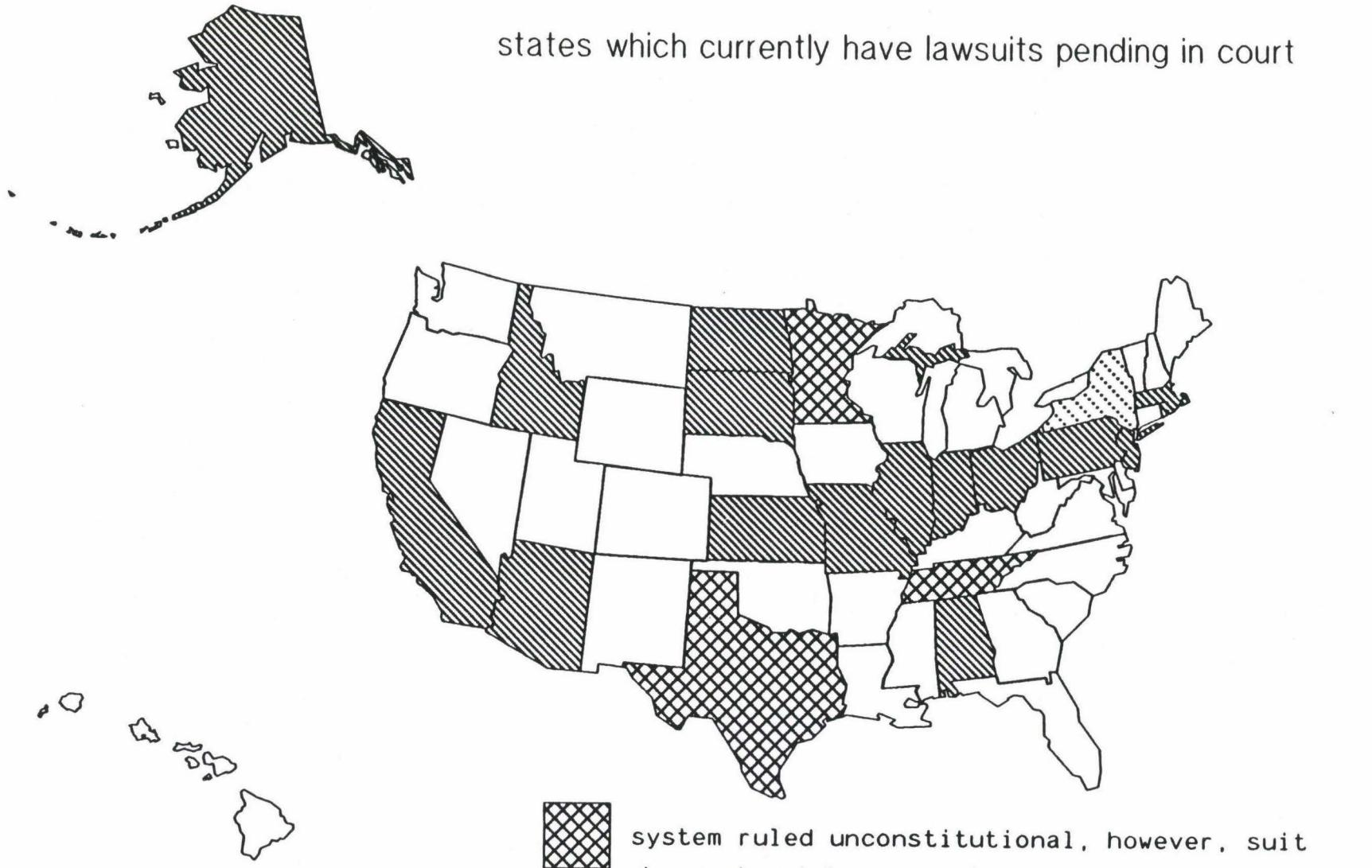
tax increases to raise money. Nearly 70 percent of these new funds were designated for the 28 urban school districts from Abbott.

Summary

States' school financing battles are far from over. The issue is timely, and state courts as well as legislatures have been active. From the examples of Texas, New Jersey, and Kentucky, legislatures can learn from the mistakes and triumphs of others in attempting to achieve equitable, constitutional systems for financing education. But, of course, change is never easy, and the most important component to instituting an effective system is the desire for change itself.

The past year saw state Supreme Courts uphold the finance system in Oregon while overturning systems in Tennessee and Minnesota. In the majority of these school finance litigation cases, the common thread is the focus on equitable resources for all schools. Additionally, courts have been asked to determine what is the basis of an adequate system of financing public education. While the courts and legislature continue to try and resolve these issues over time, the children are waiting.

states which currently have lawsuits pending in court

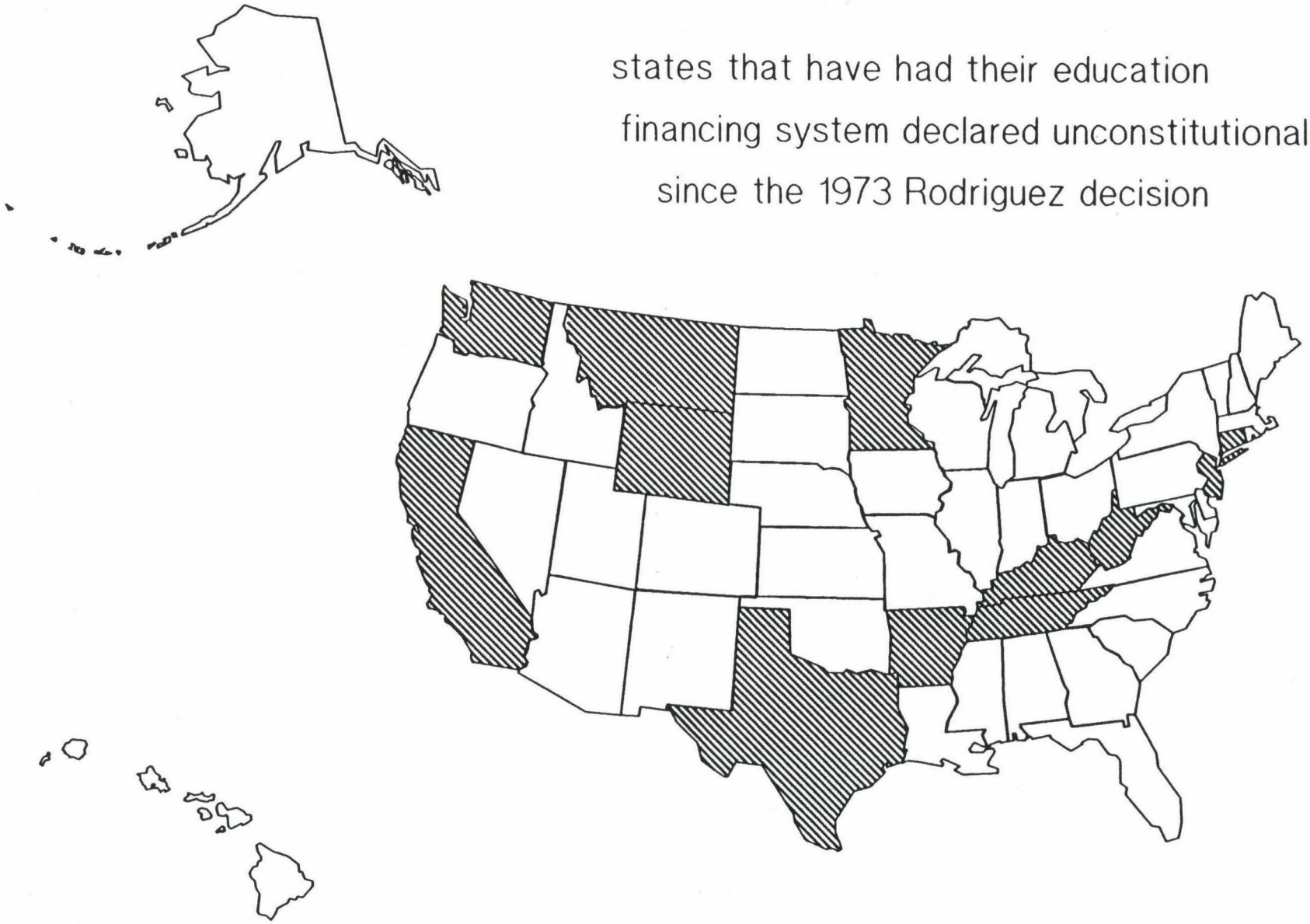


system ruled unconstitutional, however, suit has not yet been resolved

New York State Court of Appeals upheld lower court ruling, dismissing plaintiff district's suit

Source:
--NCSL State Legislative Report--

states that have had their education financing system declared unconstitutional since the 1973 Rodriguez decision



Note: some states have had their finance system ruled unconstitutional more than once.

Source:
--NCSL State Legislative Report--